THE PURCHASE OR SALE OF SECURITIES THROUGH A STOCKBROKER

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When a person desires to buy or sell securities he can do so exactly as in the case of any personal property. All he has to do is to find a seller or a purchaser, as the case may be, agree on the price, and complete the transaction by delivering the securities and receiving the purchase price in case of a sale, or receiving the securities and paying the purchase price in case of a purchase. In the case of securities care, however, is needed that they should be described correctly and that any representations as to their value should be confined to true and provable facts. A purchase or sale is so simple a transaction that between honest and reasonably intelligent people there should be no room for differences to arise. The law, too, respecting the sale of personal property is well established, and if differences do arise there is not generally any great difficulty in determining the rights of the parties.

In the case of certain securities there is so great a number of transactions that it has been found convenient for purchasers and sellers not to deal directly with one another but through the intervention of stockbrokers. These make it their business to act as agents for intending purchasers and sellers of certain securities, and wherever there are many stockbrokers they have found it convenient to establish stock exchanges. These are in their nature private business associations founded to facilitate and regulate dealings in securities, to which only stockbrokers belong. The members elect officers and committees with power to regulate matters connected with the exchange, the conduct of its members and the transaction of business. The rules they make are always supplemented by various customs, established among the members, to which is given the same recognition as if they formed part of the rules.

Every stock exchange provides a room which is called "the

exchange," or the "floor of the exchange." The use of this "exchange" or "floor" is regulated by the constitution, rules and customs of each stock exchange. In general, the rules of all American stock exchanges provide:

1. That only the members of a stock exchange shall be permitted on its floor.

2. That during certain hours of every business day the members may deal with one another on the floor.

3. That transactions between members on the floor shall only be in or with certain specified securities.

4. That only certain kinds of transactions shall be permitted on the floor.

Chief among these permitted transactions is the purchase and sale of securities. The manner in which this is done is regulated by the rules and customs of each stock exchange. In general this manner is the same on all American stock exchanges, and is as follows:

During the hours in which trading is permitted to the members of a stock exchange they congregate on the floor, and are permitted then and there to offer and to accept offers to buy or sell securities for a money price. These offers and acceptances are made by word of mouth or merely by customary signs. In making or accepting an offer a stockbroker almost invariably acts as if he were acting for himself only, even though he may actually be acting as an agent, and thus the contract which results when an offer is accepted is, on its face, a contract only between the two stockbrokers.

Every offer to buy or sell is required to be for some fixed amount of some particular kind of security and for a money price, payable on the delivery of the securities according to the rules of the stock exchange by the selling to the buying stockbroker. A variety of times of delivery, or "deliveries," as they are called, is permitted by the rules of every stock exchange, for any one of which an offer may be made.

Since these offers are *essentially* similar except in point of the delivery, they are classified by that as follows:

1. Offers to buy or sell "for cash."

If an offer to buy or sell "for cash" is accepted, the rules fix a particular time in the *same* business day in which the contract is

made, before which delivery of the securities must be made by the seller.

2. Offers to buy or sell in the "regular way" or "regular."

If an offer to buy or sell "regular" is accepted, the rules fix a particular time in *some* business day *following* the day on which the contract is made, before which delivery of the securities must be made by the seller.

3. Offers to buy or to sell where the time of delivery *is postponed* until a fixed time not further off than three days.

Offers of this sort are offers to buy or to sell "at three (or two) days." If an offer of this sort is accepted, delivery of the securities must be made by the seller on the third (or second) day after the contract is made, and before a certain time on such day.

4. Offers to buy or to sell where the time of delivery *may be postponed* until a fixed time not further off than three days.

Offers of this sort are offers to buy or to sell "buyer three" (days) or "seller three" (days). An offer to buy or to sell "seller three," if accepted, gives the seller the option of making delivery of the securities at any time before a fixed time on the third day after the contract is made; and an offer to buy or to sell "buyer three," if accepted, gives an option to the buyer of "calling" (demanding delivery of) the securities at any time before a fixed time on the third day after the contract is made.

5. Offers to buy or to sell where the time of delivery *may be postponed* for longer than three days, but not longer than sixty days.

The commonest form of such offers are offers to buy or to sell securities "buyer thirty" (days) or "seller thirty" (days), or "buyer sixty" (days) or "seller sixty" (days). Such offers, if accepted, give options similar in all respects except that of length of time to those in the case of "buyer three" or "seller three." After offers of this kind are verbally made and accepted they are reduced to writing and such written contracts are known as "stock exchange contracts."

6. Offers to buy or to sell where the time of delivery is fixed by the happening of some future event.

Common forms of such offers are offers to buy or to sell securities "seller, (upon the) opening of books," or "to arrive," or "when

issued." If an offer of this kind is accepted delivery of the securities must be made by the seller as soon as the event stated in the offer happens.

The contracts which result from the acceptance of offers to buy or to sell permitted to be made on the floor of stock exchanges must obviously be alike in the matters in which such offers are, and can only differ in the matters in which such offers do. Consequently they are all alike in being contracts to buy or to sell a fixed amount of some particular kind of security for a money price to be paid on the delivery of the securities, and differ in essentials only with respect to the time when delivery of the securities must or may be made by the seller or may be called by the buyer, which in all cases is postponed until some time after the contract is made.

The legal nature of these contracts is not difficult to determine. In all of them it is clear that the intention of the parties is to postpone the passing of the title of the securities contracted to be bought or sold *until* they are delivered and the purchase price paid. Hence, as no actual sale of personal property can occur without a complete transfer of title from the seller to the buyer, these contracts do not constitute actual purchases and sales, but are *contracts to make purchases and sales* at the time when they are to be performed by the delivery of the securities and the payment of the purchase price. All of them are what are called "executory contracts of sale," in which the actual purchase and sale does not take place until the contract is performed. It is, however, usual for stockbrokers to call contracts to buy or to sell securities "for cash" or "regular" "purchases" or "sales," and only to call contracts where the delivery may be postponed for longer than three days, "stock exchange contracts" or "*contracts* for the receipt or delivery of securities." Contracts to buy or to sell securities where the time of delivery is or may be postponed until a fixed time not further off than three days stand by themselves. They are never called "contracts," but are usually included under the head of "purchases" or "sales."

Since stockbrokers in contracting act as principals, each is legally bound to the other to perform his part under the terms of any contract. If either fails to do so, every stock exchange gives to the other an effective and immediate method of liquidating his

loss, and will enforce this liquidated claim so far as it is able by suspension of the defaulting stockbroker and by the sale of his "seat" or share in the exchange. To facilitate stockbrokers in performing the contracts that they make, every stock exchange has established rules by which the performance of all contracts made on its floor can be conveniently and expeditiously carried out. In consequence of this, every offer to buy or to sell securities made on the floor of a stock exchange contains an implied term to the effect that the contract which will result from its being accepted shall be performed according to the rules of such stock exchange. It is to be noted that by these rules the actual performance of any contract takes place *away from* the stock exchange on the floor of which it is made. In spite of this, it is customary to speak of "buying" and "selling" securities *on* the floor or *on* the exchange, and also of purchases and sales being made *on* the floor or *on* the exchange, where it would be more proper to speak of *contracting* to buy or to sell on the floor or on the exchange and of *contracts* for the purchase and sale of securities being made on the floor or on the exchange.

The manner in which American stock exchanges permit their members to deal on "the floor" for the purchase and sale of securities has now been described.

Since a stockbroker can only deal on the floor of his exchange in the manner described and can only purchase or sell securities of certain kinds for certain deliveries, any person desiring to employ him to do so must be willing that in doing so the stockbroker should conform to the way stockbrokers have to act. And as knowledge of the rules and customs which regulate this way are chargeable, as a general thing, to employers of stockbrokers, it is incumbent on them to understand them.

Now, of all the transactions engaged in between stockbrokers and the persons who employ them, the simplest is a purchase for a customer who has money which he wishes to forthwith invest in securities or a sale for a customer who has securities whose value in cash he wishes to get immediately; and the way this has to be performed must be understood before any other transaction can be fully comprehended. A transaction of this kind is called an outright or simple purchase or sale, or, more technically, a purchase or sale for "the investment account." The way this trans-

action is performed is as follows: The first step is for the customer to engage and authorize the stockbroker to do what he wishes done. Then the stockbroker contracts on the floor of the stock exchange to buy or to sell the securities the customer wishes bought or sold, either "for cash" or "in the regular way" as the customer may prefer. The stockbroker contracts, as has been stated, in his own name, and becomes personally bound to perform the contract or contracts he makes. If he performs with the securities the customer wishes to sell or with the money he wishes to invest, it is obvious the customer's desires will be fulfilled. This is, of course, what the customer intends he should do. Hence, as soon as the stockbroker has contracted, the customer supplies him with the means to perform by either giving him the money to pay for the securities he has contracted to buy, or the securities to deliver which he has contracted to sell. Then the stockbroker performs his part of the contract or contracts he has made, and should simultaneously receive from the stockbroker or stockbrokers with whom he has contracted the securities he agreed to buy, or the purchase price for the securities he agreed to sell. He then accounts to the customer, and gives him the money or the securities he has received.

This completes the transaction, so far as the purchase or sale of the securities is concerned. The stockbroker, however, must be paid for his services. Even if he were willing to act without compensation he cannot do so, for the rules of all stock exchanges provide that a stockbroker must charge and be paid *at least* a certain fixed sum for every transaction he makes on behalf of any other person, and impose a severe penalty for any violation of this provision. This sum is called the stockbroker's commission, and is a fixed percentage of the par value of the securities contracted to be bought or sold. It is usually provided that the stockbroker must charge and be paid at least this commission without any manner of rebate or return, discount or allowance "on all purchases and sales" and contracts which he makes on the floor of the stock exchange. The words "purchases and sales" are here used with the significance of contracts to buy or to sell, and consequently the customer must in all cases be prepared to pay this commission *when* the stockbroker has contracted to buy or to sell. In practice, however, the stockbroker does not usually require him to pay it until he has fully performed the contract or contracts he has made, and

for his services in so performing the stockbroker makes no additional charge.

I now propose to consider *the engagement* of a stockbroker by a customer who wishes a simple purchase or sale of securities to be effected on the stock exchange to which the stockbroker belongs. Since this can only be done in the way and on the terms described, the engagement must be adapted to meet the requirements of this way and these terms. And from this point of view the following matters are requisite to every such engagement:

1. Since the stockbroker acts as the agent of the customer, he must be vested with authority to buy or to sell the securities the customer wants in the manner described. This way naturally falls into two parts—(*a*) the contracting to buy or to sell, and (*b*) the performance of the contract or contracts when made, both of which are done by the stockbroker, and both of which must, consequently, be embraced by his authority.

2. Since the stockbroker performs with the money or securities of his customer, provision must be made for his being supplied with the money or the securities. This usually takes either the form of a deposit *at the time* the stockbroker is engaged, or, as the making of contracts is always uncertain, of an offer to supply the money or the securities *on* the making of the contract or contracts.

3. Since the stockbroker must be paid a commission, on terms and in amount as are fixed by the rules of his stock exchange, provision must be made for the payment by the customer of this commission according to the requirements of these rules. This usually takes the form of a simple promise by the customer to do so.

Subject to these requisites, the stockbroker may be engaged in any way he and the customer may agree upon, and all kinds of promises, provisos and conditions may be made part of his engagement. There has been established, however, a convenient, brief and customary way of engaging a stockbroker to carry out a simple purchase and sale of securities. This way is almost always used, except where a customer is ignorant of it, or peculiar circumstances exist which force the adoption of some other form of engagement. I now propose to describe this mode of engagement, its legal consequences, the rights of the parties, and how, in point of fact, the transaction is carried out under its terms.

The Order.—The first step is for the customer to give the stockbroker, either verbally or in writing, an "order" to buy or to sell securities for "regular delivery," for which there is a regular form. This is: "Buy or sell for my account and risk (here follow the amount and kind of securities to be bought or sold) at (here follows the price at which the customer wishes the securities to be bought or sold)."

Technical words are used, and technical meanings are attributed, and customs have been established in the business of stockbrokers. Thus a typical order in the regular form would be worded: "Buy for my account and risk 100 D. L. & W. at 271." So far as these customs, technical words and technical meanings apply to the wording of orders in the regular form, they must be described before the full meaning of an order like this typical one can be apprehended.

1. The word "buy" or "sell," as used in an order in the regular form given to a stockbroker who is a member of a stock exchange, is taken to mean "contract to buy" or "contract to sell on the stock exchange of which you are a member according to its rules and customs."

2. The words "for me" or "for my account," as used in an order in the regular form, are taken to mean that the contract the stockbroker is directed to make is to be made for and on behalf of the customer.

3. The words "at my risk," as used in an order in the regular form, have the customary significance that the customer assumes the risk of any failure to perform on the part of the stockbroker or stockbrokers with whom his stockbroker contracts, and that he does not require the latter to guarantee in any way that the contract or contracts which he makes will be performed by the stockbroker or stockbrokers with whom he contracts. If these words are omitted in an order in the regular form, as they may be, they are implied by force of custom.

4. When an order in the regular form does not state a particular delivery for which the securities are (to be contracted) to be bought or sold, it is taken to mean that they shall be contracted to be bought or sold for "regular" delivery.

5. A large number of abbreviations of the full names of corporations and for various kinds of securities are customarily used among stockbrokers. When any of these abbreviations are used in

an order in the regular form, they are taken for what they stand for to stockbrokers.

6. Where an order in the regular form simply states a number before the name or the customary abbreviation for the name of a corporation, as "Sell for my account and risk 100 Union Pacific," the number in question is taken to mean the number of shares of the capital stock of the corporation named which are to be (contracted to be) bought or sold. If the capital stock of the corporation is divided into preferred and common stock the order should of course specify which kind is intended, but if this should be neglected the order will be taken by custom to refer to the common stock.

7. Bonds and shares of stock are contracted to be bought or sold on the floor of a stock exchange for so much for each hundred dollars' worth of the par value. Hence, when an order in the regular form simply states a number at which a number of bonds or shares of stock is to be bought or sold, as "Sell for my account and risk 100 Erie at 13," the number in question is taken to mean the number of dollars for which each hundred dollars' worth of the par value of the bonds or stock shall be (contracted to be) bought or sold, subject to the following custom:

That where a particular price is stated in an order in the regular form, the words "or better" are read in after it; which mean that the price stated is the price at which the securities shall be (contracted to be) bought or sold, unless a better price—*i. e.,* a lower, in case of a purchase; a higher, in case of a sale—is obtainable, in which case they shall be (contracted to be) bought or sold at such better price.

8. Where no price is stated in figures in an order in the regular form, but the securities are ordered to be (contracted to be) bought or sold "at the market price" or "at the market," it is taken to mean that the securities are (to be contracted) to be bought or sold for the best price—*i. e.,* the lowest, in case of a purchase; the highest in case of a sale—obtainable.

9. Where an order in the regular form does not state anything at all about the price for which securities are (to be contracted) to be bought or sold, the order is taken to mean that the securities shall be (contracted to be) bought or sold at the "market price," the meaning of which has just been explained.

Interpreting according to these customs, technical words and

meanings, the order taken as typical, "Buy for my account and risk 100 D. L. & W. at 271," it becomes: "I order you to contract to buy for regular delivery for me and at my risk on the stock exchange of which you are a member, according to its rules and customs, 100 shares of the common stock of the Delaware, Lackawanna & Western Railroad Company, at 271 dollars, or better, for every hundred dollars' worth of the par value of the shares."

The Legal Nature of the Order.—Stockbrokers form a particular class of semi-public agents, and as such hold themselves out as ready to act as agents for their employers, who are called "customers" or "clients." Obviously an order is a proposition to vest the stockbroker with an agency. As between the principal and the agent the scope of every agency depends *on the principal's intent.* Hence, it is the duty of the customer to make any order so clear that there is no possibility of its being misunderstood by the stockbroker. This is peculiarly incumbent on him in view of the customs, technical words and meanings which have been described, and which in law would probably be held to bind a customer, even if he should claim he did not know of them. Assuming that a customer has given an order in the regular form, and interpreting it according to the customs, technical words and technical meanings which have been stated, then it will bear the full significance stated above and will be found to contain:

1. A proposition to make the stockbroker the customer's agent with authority,

(*a*) to contract to buy or to sell, according to the rules and customs of the stock exchange of which the stockbroker is a member, the securities stated in the order on the terms there stated, and, since this authority is "to contract," it permits the stockbroker making as many separate contracts with one or more other stockbrokers as may be necessary to purchase or sell the securities stated in the order;

(*b*) to perform in the way established by the rules of the stock exchange of which the stockbroker is a member the contract or contracts made under the authority to contract.

The former of these authorities is clearly expressed in the order. The latter must be implied, but the ground for its implication is solid, and is that the customer must be held to propose to authorize the necessary consequences of what he expressly proposes to author-

ize, and personal performance by the stockbroker of the contract or contracts he makes is a necessary consequence of making it or them, as it is expressly proposed he should do, according to the rules and customs of his stock exchange.

2. An implied offer by the customer that if the stockbroker becomes the customer's agent, as proposed by the order, and in consideration of doing so the customer will reimburse and indemnify him for all outlays, expenses, liabilities and losses necessarily or reasonably incurred in so acting as agent. This offer obviously involves an offer to supply the stockbroker with the securities or money needed to perform in the event of his contracting to buy or to sell.

3. An implied offer by the customer to pay the stockbroker a commission in accordance with the requirements of the rules of his stock exchange.

These requirements are that the stockbroker shall be paid a fixed commission for every contract he makes on the floor of the stock exchange to which he belongs. Hence, the customer's implied offer is to pay the stockbroker the usual commission in consideration of and on the making of any contract or contracts to buy or to sell he may make to carry out the order. Hence, this offer remains as made and unaffected by anything the stockbroker may do until he has *actually contracted to buy or to sell* the securities. Then, by the performance of what the customer offered to pay for, the customer's offer to pay a commission ripens into a promise to do so. In this way a contract springs into existence binding the customer to pay the fixed commission. This contract is of the unilateral or executed variety.

This is the whole legal significance of an order in the regular form:

The Taking of an Order.—Where a proposition to confer an authority is made all that is required in law to create the relation of principal and agent between the proposer and the person to whom the proposition is made is that the latter should consent to the proposition. Hence, after an order is given to a stockbroker the next step is for him to decide whether he will refuse it or consent to it. If he does not refuse it, as he may in any case, he will express in some way, by words or acts, his consent or willingness to undertake what he is ordered. Such *an expression of willingness* is

called "taking" the order. This expression of willingness, this consent to the proposition made him, need not necessarily be communicated by the stockbroker to the customer; it may be inferred from his conduct. So, too, a refusal to consent to a proposition to confer an agency need not be communicated, but can be left to be inferred. But since it is very easy, except in clear cases, for error to arise in inferring what a stockbroker means in the case of his remaining silent when an order is given him, the only safe course for the customer is to obtain a clearly expressed consent or refusal.

This is *all* the stockbroker usually expresses at the time of taking an order, except that, where he has not entire confidence in his customer's responsibility, he will ask him to deposit with him the securities he wants to sell or the money he wants to invest.

This giving and taking of an order of the kind described, with or without a deposit of money or securities constitute the whole of the customary form of engagement of a stockbroker to carry out a simple purchase or sale of securities.

The Legal Effect of "Taking" the Order.—This is to constitute the stockbroker the customer's agent, and to vest in him the authorities proposed by the order, and also to turn the customer's offer to indemnify the stockbroker into a promise to do so; but it has no effect upon the customer's offer to pay a commission. That remains an offer until the securities are contracted to be bought or sold.

Sometimes, though rarely, the stockbroker, in addition to expressing his willingness to undertake an order, expressly promises, in consideration of the customer's giving him the order, to act as the customer's agent. It is unusual to find such a promise expressed in words, but it is usual for courts of law to imply it in all cases where an order is "taken." The only effect of such a promise is to add to the stockbroker's status as agent, created by the mere "taking" of the order, a contractual obligation on his part *to act as agent.* This makes no difference in the rights and duties of the customer and stockbroker as principal and agent, for, whether they spring from status alone or from status *and* a contract to act as agent, they are the same, except that in the latter case there is a liability sounding in *contract* for any default in his duties as agent in addition to the ever-present liability in tort. It is to be carefully noticed that in this regular form of engagement a promise

on the part of the stockbroker to carry out the order or to do anything except to act as the customer's agent cannot be found.

The Legal Effect of the Whole Engagement.—It follows from what has been said that the whole result of the usual engagement of a stockbroker, consisting in the giving of an order and the "taking" of it, accompanied by or without an express or implied promise to act as agent, is to create an agency coupled with an offer to pay a commission and a promise to indemnify the stockbroker.

The deposit of the securities to be sold or the money to be invested at the time the order is given does not change this result. It merely adds a collateral arrangement of security. It provides in advance the securities or money which the stockbroker will need in case he contracts. This deposit must, of course, be at once returned by the stockbroker to the customer in case he fails to contract.

Where the money or securities are not deposited at the time of giving the order, the stockbroker relies upon the customer's promise to supply the securities or money in case the stockbroker contracts, which, as has been stated, is involved in the customer's promise to indemnify the stockbroker against loss and liability.

It can now be seen that this customary mode of engagement meets all the three requirements which on an earlier page were laid down as necessary to every engagement of a stockbroker to buy or sell securities according to the rules of American stock exchanges.

Assuming now that a stockbroker has been engaged by his taking an order like the one given above as typical, I will state according to what legal principles and how as a matter of fact he must thereafter act to carry out his engagement correctly.

Of the Carrying Out of the Order.—The relation between the customer and the stockbroker created by the usual engagement being that of principal and agent, the principles of the law of agency govern its carrying out. If in any case the stockbroker carries out the order according to the intent of the customer, the customer is bound. This is the meaning of the stockbroker having authority. If, on the other hand, the stockbroker fails to carry out the order according to the customer's intention, the customer is not bound In such a case he is not required to take any steps to assert this. On the other hand, if he chooses to, he can ratify what has been

done contrary to his intention. Ratification rests on the consent of the customer to be bound. Therefore he should, as a matter of precaution, repudiate anything done contrary to his intention, in order that his silence may not be taken and used as evidence of consent.

Another principle of the law of agency is that the law requires of one who undertakes an agency that he should exercise due care in and about what he is entrusted to do, and to act in good faith toward his principal. If he fails in either direction he will be liable in damages.

The degree of care which a stockbroker must show is to be measured by the standard of care which a faithful and intelligent stockbroker thoroughly versed in his business would show. It is not to be measured by the degree of care which one not a stockbroker would show, or by that degree of care which is customary, or which stockbrokers usually give, unless such degree of care is that which an intelligent, faithful and competent stockbroker would show.

The duty of showing good faith is very stringently enforced. In doing so judges incline to lay down general rules of conduct rather than to decide each case on its merits. Thus the rule is established and enforced without exception that a stockbroker cannot sell to or buy from himself, or his clerk, or a firm of which he is a member, and this without proof of fraud, and even in case where the price obtained for or given by the customer is as good or better than would otherwise have been obtained or paid. There is no established custom which would justify stockbrokers in violating this rule of law. These are the main principles of the law of agency which govern the carrying out of an order.

How, now, as matter of *fact,* does a stockbroker carry out an order interpreted according to the customs, technical meanings and technical words already stated? He is authorized first to contract. This authority is qualified by two customs. Before stating them it is necessary to explain that the "execution" of an order consists only of *the contracting* to buy or to sell the securities ordered upon the terms of the order, and an order is said to be "executed" when this is done. In other words, the "execution" of an order is the carrying out of the authority to contract. The two customs are:

1. An order in the regular form to buy or to sell securities can only be "executed," if at all, on the day it is given, unless it is expressly stated in the order that it is "good" for a longer period of time or for some particular period of time.

2. There is implied as a term or condition of an order in the regular form that the stockbroker shall try to "execute" the order as early in the time for which it is "good" as it is possible for him to do in accordance with the rules and customs of the stock exchange to which he belongs.

These two customs are so well established that a customer would probably be held bound by them, even though nothing was said about them at the time the order was given; and hence, if he does not wish them to apply to an order, he must say so clearly to the stockbroker. Assuming they do apply, the stockbroker's first step after taking an order is to try to execute it at the earliest possible moment in the time it is good for. If he neglects this duty he will be liable in damages.

Now, unless he carries out the terms of the order *exactly,* the customer will not be bound, and the stockbroker will presumptively be liable for want of care. For, unless given discretion, the stockbroker cannot vary in any particular from the terms of an order, even where he benefits the customer by so doing. Hence, he must try to contract to buy or to sell according to the rules and customs of his stock exchange the exact amount of the particular kind of security stated in the order at the price or better, if any is fixed, or, if no price is fixed, at the highest market price for regular delivery. As already stated, if in any case the stockbroker succeeds in *contracting to buy or to sell as he is ordered to,* he is said to have "executed" the order, and the order is said to be or to have been "executed." And this is so although the actual performance of the contract or contracts by the delivery of the securities and the payment of the price have yet to come. In executing an order the stockbroker can make one contract, or as many contracts with the same or different stockbrokers as may be necessary or advisable, provided that the total amount of securities contracted to be bought or sold is the amount stated in the order. No custom exists allowing a stockbroker to contract to buy or sell a less amount of securities than he is ordered to in a case where no permission is given to him to do so. This permission is, however, usually given with all

orders to buy or sell more than one hundred shares or ten bonds, and the number of shares or bonds stated in the order is in such case treated as a limit to be reached if possible. Where such permission is given, the order is said to be "executed" for as many shares or bonds as are contracted to be sold.

The Commission.— When the stockbroker has contracted to buy or to sell according to the terms of the order, the customer's offer to pay him a commission according to the rules of the stock exchange to which the stockbroker belongs ripens into a promise to do so. The customer is not bound to volunteer to pay it. He can wait until the stockbroker asks him for it. The stockbroker does not usually demand it of the customer at this time, but charges it against him and waits for it until he accounts to the customer.

The Notice.—There is a custom that the stockbroker, as soon as he can after "executing" an order, should give or send to the customer a written notice of what he has done. If the notice is sent to the customer, it must be sent in such a way that knowledge of its contents can be imputed fairly to him. To do this, it would be held in most jurisdictions that mailing to the customer the notice, postage paid and properly addressed, or leaving it at his business office, or, if he has no office, at his home, was sufficient, without proof that the notice reached him, where there was no evidence that it did not reach him.

Where it is the customer's intent that this custom should apply, and in law it will generally be presumed that he has such intent, the law will enforce it as a term of the stockbroker's agency, and will require that the notice shall be given. The stockbroker need not follow any particular form in giving this notice. There is, however, a customary form which is almost always used. This states exactly what kind of contract or contracts the stockbroker has made, the date on which it or they were made, and gives, in addition, the name of the stockbroker or stockbrokers with whom the contract or contracts has or have been made. As regards the wording of such a notice, the same customs, technical words and technical meanings which are used in the wording of an order in the regular form are made use of in the same way, *mutatis mutandis.* Since these customs have been stated, they need not be repeated here. A notice which would be typical would read:

"March 26, 1910.

"We have sold for your account and risk 100 D. L. & W. at 285 to Brown.

(Signed) "E. C. SMITH & Co."

The Performance of the Contract or Contracts.—If the stockbroker has not previously demanded and received from the customer the means to perform the contract or contracts he has made, he will demand them at the time he notifies the customer of the "execution" of the order, or as soon thereafter as he needs them. The customer is bound to comply with this demand by reason of his offer and promise to indemnify the stockbroker against all liability.

As already stated, the stockbroker has authority to perform in the regular way the contract or contracts he has made, which authority is dormant till the contract or contracts is or are made, and comes to nothing if the stockbroker fails to "execute" the order. This authority is created by "taking" the order, and where at that time there is no communication from the stockbroker to the customer it can only rest upon his status as agent, and no contractual obligation to act as the customer's agent can be implied. But a contractual obligation to act as the customer's agent in performing the contract or contracts can be *implied,* and will usually be implied, from the deposit, at the stockbroker's implied or express request, of the means to perform by the customer either at the time of the "taking" of the order or after its execution. But it is not usual to find an *express* promise that the stockbroker will act as the customer's agent in performing. Nor is it usual to find at any point in the engagement of the stockbroker any express obligation binding him to perform the contract. It might be thought requisite that such an obligation should be created. If it were required it would be for the customer's protection, and it is not necessary for that: first, because of the stockbroker's duty to act in good faith and with due care, which arises, as has been stated, from his agency to perform; and, secondly, because the stockbroker, in order to relieve himself from the personal liability he assumes in contracting as he does in his own name, is always ready, without being under any obligation to the customer to do so, to perform any contract he may make on behalf of a customer if the customer supplies him with the means to do so.

It does not seem necessary to describe the actual steps the stockbroker takes to perform in the regular way a contract or contracts he has made on behalf of a customer. In this, as in every other part of his agency, he must exercise due care and show good faith. On performing he must, of course, receive the securities which he contracted to buy where the customer ordered securities bought, and the price in money he contracted to sell for where the customer ordered securities sold. Since he actually receives these as the agent of his customer, it is his duty to account for them promptly to the customer. This completes the transaction.

I have now described the customary form of engagement where a customer wishes to buy or to sell securities for regular delivery, its legal consequences, the rights of the parties, and how, in point of fact, the transaction is carried out under its terms.

Where a customer wishes to buy or to sell securities for "cash" instead of for regular delivery, the same customary form of engagement is used. The only difference is that the order must state that the securities are to be bought or sold for "cash." It follows that the consequences of this engagement, the rights of the parties and the way, in point of fact, in which it is carried out, are the same as have been described, with the exception that the time of delivery is different.

The same is true where a customer wishes to buy or sell securities and to postpone the delivery for not longer than three days; and likewise where he wishes to buy or sell securities, granting or reserving an option of delivery or calling for the delivery of the securities at any time within three days.

The same is also true where a customer desires to buy or sell securities for "future delivery," except that in such cases there are important additions to the engagement of the stockbroker arising through the necessity of securing the customer's delivery to him of the securities sold or the purchase price of the securities bought when the time comes for the stockbroker to need the one or the other. This can be done in any way, but is usually done by the deposit of a certain amount of money, called a "margin," under a somewhat elaborate agreement, the terms of which have been established by custom.

It may also be noted that where a customer wishes to buy securities on a margin, in the hope that they will increase in price,

the transaction involves a purchase of securities for regular delivery made in the regular way under the customary form of engagement, followed normally by a sale of the same securities for regular delivery, likewise made in the regular way and under the customary form of engagement. And so, where a customer wishes "to sell securities short" there is involved a sale of securities for regular delivery made in the regular way under the customary form of engagement, followed normally by a purchase of the same securities for regular delivery, likewise made in the regular way and under the customary form of engagement. But these speculative transactions have many other features, which would make this article too long to consider.

But it can now be seen why it is absolutely necessary for a person intending to deal with a stockbroker, whether he intends to buy or sell securities outright or for future delivery or on a margin, to understand how a simple purchase and sale for regular delivery is carried out under the regular form of engagement.